

Reply Exhibit B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUSANNA MIRKIN AND BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Case No: 18 Civ. 2949 (ARR) (RER)

Plaintiffs,

v.

XOOM ENERGY, LLC, and XOOM
ENERGY NEW YORK, LLC,

Defendants.

**PLAINTIFFS' SECOND SET OF REQUESTS FOR THE PRODUCTION
OF DOCUMENTS TO DEFENDANTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Plaintiffs Susanna and Boris Mirkin ("Plaintiffs") hereby request that XOOM Energy, LLC and XOOM Energy New York, LLC ("XOOM" or "Defendants") produce the following documents and things within thirty (30) days from the date of service of this Plaintiffs' Second Set of Requests for the Production of Documents at the offices of Wittels McInturff Palikovic, 18 Half Mile Road, Armonk, New York, 10504.

Plaintiffs incorporate herein the definitions and instructions and production specifications included in their September 4, 2019 First Requests for the Production of Documents on All Defendants. Defendants' productions and responses to these requests must comply with the ESI Order entered by the Court on March 6, 2020 (ECF No. 53).

REQUESTS FOR PRODUCTION

111. All documents concerning XOOM's rate-setting workbook or rate-setting spreadsheet pertaining to XOOM's New York customers. For avoidance of doubt, all responsive documents that exist in Excel spreadsheet or similar format must be produced in native format with formulas preserved. *See* ESI Protocol § II.F.1(c)(i).

112. All documents concerning the change in variable rate pricing language in XOOM New York contracts made in or around early 2016 from

“Your monthly variable rate is based on XOOM's actual and estimated supply costs which may include but not be limited to prior period adjustments, inventory and balancing costs.”

to

“Your variable rate may fluctuate and may be higher or lower than your local utility. Your rate is based upon a number of factors, which may include but not be limited to, the fluctuation of wholesale commodity costs or other components of wholesale prices (including but not limited to capacity related costs, fluctuations in energy supply and demand, and weather patterns) and XOOM's pricing strategies.”

This request specifically includes without limitation all documents concerning (a) what prompted the change in language and/or (b) the reason or reasons identified by XOOM employees and/or agents for changing the contract language.

113. All documents concerning the first issuance of the revised contract language shown in Request No. 112 to a XOOM New York customer and/or the first receipt of a signed contract reflecting that revised contract language by a XOOM New York customer.

114. All documents that are used or could be used by Defendants to answer Plaintiffs' Interrogatory No. 24.

115. All documents concerning the assignment of New York customers from Planet Energy Corporation to XOOM.

116. All documents created between 2012 and the present concerning XOOM's "margin targets for the year" as described by Jason Loedhe in the deposition transcript produced by Defendants as XOOM_INIT_000580–679 (page 71, lines 10–11).

117. All documents created between 2012 and the present concerning XOOM's "budgeted margin" as described by Jason Loedhe in the deposition transcript produced by Defendants as XOOM_INIT_000580–679 (page 73, line 12).

118. All documents created between 2012 and the present concerning XOOM's "gross margin goal for the month" as described by Thomas Ulry in the deposition transcript produced by Defendants as XOOM_INIT_000305–425 (page 101, line 16).

Request Nos. 119–122 concern XOOM custodian Sachin Ramprakash's LinkedIn page attached hereto as Exhibit A.

119. All documents that concern the following item set forth in **Exhibit A**: "Proved/Disproved debates through evidence of technical and financial analysis, for example, how to measure the correlation (if any) between customer demand requirement and the volatility of zonal commodity prices," including but not limited to all documents concerning the conclusions of those analyses and/or any actions or XOOM strategic or pricing decisions made in connection with or as a result of those analyses. This request specifically includes all responsive documents concerning any such analysis whether or not Mr. Ramprakash personally participated in the analysis.

120. All documents that concern the following item set forth in **Exhibit A**: "Conducted quantitative research to forecast the risk and return of firm's margin based on the shift in profile curves such as customer usage, firm's margin based on seasonality and rank against competitors," including but not limited to all documents concerning the conclusions of that research and/or any actions or XOOM strategic or pricing decisions made in connection with or

as a result of that research. This request specifically includes all responsive documents concerning any such research whether or not Mr. Ramprakash personally participated in the research.

121. All documents that concern the following item set forth in **Exhibit A**: “Examined opportunities to be top ranked against competitors with product pricing, by minimizing WACOG through term hedges on capacity, commodity and storage gas, profile margins and seasonality,” including but not limited to all documents concerning the conclusions of that examination and/or any actions or XOOM strategic or pricing decisions made in connection with or as a result of that examination. This request specifically includes all responsive documents concerning any such examination whether or not Mr. Ramprakash personally participated in the examination.

122. All documents that concern the item described on **Exhibit A**: “Developed complex financial, pricing and storage models and backtested for New York . . . markets.” This request specifically includes all responsive documents concerning modeling and backtesting for New York markets whether or not Mr. Ramprakash personally participated in the modeling or backtesting.

123. All documents concerning the “margin adder Simple” identified in the document produced by Defendants as XOOM_INIT_001118 (which is shown to equal \$.0030 as of October 23, 2015) during the period from 2012 through 2016, including (a) documents showing whether XOOM added a “margin” to the SimpleFlex rates each month to determine the rates for XOOM’s “SimpleClean 50%” or other comparable products; (b) documents showing whether or not the amount of that “margin adder” changed over time; (c) documents showing the amount of the “margin adder” throughout that period; and/or (d) documents showing that there were months or periods of time when XOOM did not use a “margin adder” to determine “SimpleClean 50%”

rates and instead determined those rates independently or used another approach to determine, select, or set “SimpleClean 50%” rates.

Dated: August 14, 2020
Armonk, New York

By: /s/ Steven L. Wittels
Steven L. Wittels
J. Burkett McInturff
Tiasha Palikovic
Steven D. Cohen

WITTELS MCINTURFF PALIKOVIC

18 Half Mile Road
Armonk, New York 10504
Telephone: (914) 319-9945
Facsimile: (914) 273-2563
slw@wittelslaw.com
jbm@wittelslaw.com
tpalikovic@wittelslaw.com
sdc@wittelslaw.com

*Counsel for Plaintiffs and
the Proposed Class*

Daniel Hymowitz
HYMOWITZ LAW GROUP, PLLC
1629 Sheepshead Bay Road
Brooklyn, NY 11235
Telephone: (718) 807-9900
Facsimile: (866) 521-6040
daniel@hymowitzlaw.com

Andrey Belenky
Dmitry Kheyfits
KHEYFITS BELENKY LLP
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: (212) 203-5399
Facsimile: (212) 203-6445
abelenky@kblit.com
dkheyfits@kblit.com

Co-Counsel for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served by email upon the counsel of record for Defendants, this 14th day of August, 2020.

/s/ Steven L. Wittels _____
Steven L. Wittels